

WOMBLE
CARLYLE
SANDRIDGE
& RICE

A PROFESSIONAL LIMITED
LIABILITY COMPANY

150 Fayetteville Street
Suite 2100
Raleigh, NC 27601

Post Office Box 831
Raleigh, NC 27602
Telephone: (919) 755-2100
Fax: (919) 755-2150
www.wcsr.com

Pressly M. Millen, Esq.
Direct Dial: (919) 755-2135
Direct Fax: (919) 755-6067
E-mail: pmillen@wcsr.com

September 2, 2010

By Facsimile and First-Class Mail

The Honorable Malcolm J. Howard
Senior United States District Judge
United States District Court
for the Eastern District of North Carolina
P.O. Box 5006
Greenville, North Carolina 27835-5006

Re: *Advanced Internet Technologies, Inc. v. Dell Inc.*, No. 5:07 CV 426H (U.S.D.C.,
E.D.N.C.)

Dear Judge Howard:

I am writing as counsel for Defendant Dell Inc. ("Dell") in connection with the above-referenced action. I am writing specifically concerning Your Honor's recent order directing the parties to a court-hosted settlement conference before Magistrate-Judge Daniel.

As Your Honor may be aware, Plaintiff has a currently pending discovery sanctions motion against Dell (DE # 305) for which briefing was completed last Friday, August 26. Inasmuch as the sanctions motion concerns an earlier Order of Judge Daniel – as well as subject matter with which Judge Daniel is well acquainted – we respectfully request that Judge Daniel continue his role as the Magistrate Judge in this action, including ruling on the pending discovery motion, in addition to conducting the court-hosted settlement conference. As the District of Maryland confirmed in an opinion just last year, presiding over a settlement conference is "not a legitimate reason to disqualify" a Magistrate Judge from the remainder of the action. *See Proa v. NRT Mid Atlantic Inc.*, 608 F. Supp.2d 690, 694 (D. Md. 2009).

I have conferred with counsel for both Plaintiff and Co-Defendant Dell Financial Services and both are in agreement with the foregoing.

We appreciate Your Honor's attention to this matter and look forward to hearing from Your Honor concerning this matter.

Respectfully yours,


Pressly M. Millen

cc: Counsel of Record (by email)